UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I - NEW ENGLAND

ADMINISTRATIVE ORDER ON CONSENT FOR REMOVAL ACTION DESIGN AT THE BENNINGTON LANDFILL SUPERFUND SITE

EPA Region I Docket No. CERCLA-I-96-1014

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

In the Matter of:	
BENNINGTON LANDFILL SUPERFUND SITE **Bennington, Vermont**	**U.S. EPA Region I** **CERCLA Docket No. CERCLA-I-96-1014**
Proceedings Under Sections 104(a) & (b); 106(a); and 122(a) & (d)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended 42 U.S.C. §§ 9604(a) & (b); 9606(a); and 9622(a) & (d)(3)	**ADMINISTRATIVE ORDER ON CONSENT FOR REMOVAL ACTION DESIGN**

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Order On Consent For Removal Action Design ("Order") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and the Respondents listed on Appendix A ("Respondents"). This Order concerns the performance of the design of a removal action by the Respondents in connection with the Bennington Landfill Superfund Site in Bennington, Vermont. This Order is issued pursuant to the authorities vested in the President of the United States by Sections 104(a) & (b); 106(a); and 122(a) & (d)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. §§ 9604(a) & (b); 9606(a); and 9622(a) & (d)(3). These authorities were delegated to the Administrator of EPA on January 23, 1987 by Executive Order 12580, 52 Fed. Reg. 2926 (January 29, 1987), further delegated to

the Regional Administrator, EPA Region I, by EPA Delegation Nos. 14-14-A and 14-14-C, and redelegated by the Regional Administrator to the Director of the EPA Region I Office of Site Remediation and Restoration. This Order is part of an overall settlement effort in connection with the Bennington Landfill Superfund Site. The Parties will attempt to negotiate a judicial settlement regarding implementation of the removal action, de minimis settlement, past costs, future oversight costs, Natural Resource Damages, and EPA and the State of Vermont Department of Environmental Conservation ("VTDEC") implementation of a portion of the response action authorized by the Action Memorandum signed by the Regional Administrator on December 23, 1994.

2. EPA notified the State of Vermont of this action on July 24, 1995 pursuant to Sections 104(b)(2) and 106(a) of CERCLA, 42 U.S.C. §§ 9604(b)(2) and 9606(a). EPA notified the Federal Natural Resource Trustees of this action on July 20, 1995 pursuant to Section 122(j) of CERCLA, 42 U.S.C. § 9622(j).

3. The Respondents do not admit any liability to EPA, the State of Vermont or any other party arising out of the Site and the Respondents' participation in this Order shall not constitute or be construed as an admission of liability or of EPA's findings or determinations contained in this Order except in a proceeding to enforce the terms of this Order. The Respondents agree to comply with and be bound by the terms of this Order. The

Respondents further agree that they will not contest the basis or validity of this Order or its terms. However, in the event that the Respondents, EPA, the State of Vermont, and the de minimis parties identified in Appendix C have not executed a judicial settlement memorializing the overall settlement effort, as described in paragraph 1 above, by January 1, 1997, the Respondents' deadlines, liability for penalties (relating only to violations of this Order which occur after January 1, 1997), or other obligations under this Order shall cease. EPA retains the right to collect stipulated penalties which accrue on or before January 1, 1997.

II. PURPOSE

4. In entering into this Order, the mutual objectives of EPA and the Respondents are to perform the design of the selected removal action for at the Bennington Landfill Superfund Site in Bennington, Vermont, as set forth in the Action Memorandum signed by the Regional Administrator, EPA Region I, on December 23, 1994 and the Statement of Work appended to this Order as Appendix B.

III. PARTIES BOUND

5. This Order shall apply to and be binding upon EPA, the Respondents, and Respondents' heirs, successors, and assigns. Any change in ownership or corporate status of a Respondent including, but not limited to, any transfer of assets or real or personal property shall in no way alter such Respondent's

responsibilities under this Order. Respondents are jointly and severally responsible for carrying out all activities required of them by this Order. The failure of one or more Respondent to comply with all or any part of this Order shall not in any way excuse or justify noncompliance by any other Respondent, including but not limited to the failure to perform all obligations of any defaulting Respondent.

6. The Respondents shall provide a copy of this Order to each contractor hired to perform any work required by this Order and to each person representing any of the Respondents with respect to the Site or the work required by this Order. The Respondents or their contractors shall provide written notice of the Order to all subcontractors hired to perform any portion of the work required by this Order. The Respondents shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the work contemplated herein in accordance with this Order.

IV. DEFINITIONS

7. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Order or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

a. "Action Memorandum" shall mean the EPA Action Memorandum relating to the Bennington Landfill Superfund Site signed on December 23, 1994, by the Regional Administrator and all attachments thereto.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

c. "Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

f. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including, but not limited to, any amendments thereto.

g. "Order" shall mean this Administrative Order On Consent For Removal Action Design and all appendices attached hereto.

h. "Paragraph" shall mean a portion of this Order identified by an arabic numeral or an upper case letter.

i. "Parties" shall mean EPA and the Respondents.

j. "Removal Action" or "NTCRA" shall mean the non-time-critical removal action described in the Action Memorandum, signed by the Regional Administrator, EPA New England, on December 23, 1994, provided, however, that the term "Removal Action" or "NTCRA" shall not include those activities required by Paragraph 73 (concerning Record Preservation).

k. "Respondents" shall mean those Parties identified in Appendix A which are responsible under the terms of this Order to carry out the requirements set forth herein.

l. "Section" shall mean a portion of this Order identified by a roman numeral.

m. "Site" shall mean the Bennington Landfill Superfund Site, encompassing approximately 28 acres of land located on Houghton Lane about three miles north of the town center in Bennington, Vermont, including the areal extent of contamination and all areas in close proximity to the contamination necessary for implementation of the design of the Removal Action.

n. "State" shall mean the State of Vermont.

o. "Statement of Work" or "SOW" shall mean the statement of work for the design of the Removal Action, as set forth in Appendix B to this Order and any modifications made in accordance with this Order.

p. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

q. "VT DEC" shall mean the State of Vermont Department of Environmental Conservation and any successor departments or agencies of the State.

r. "Waste Materials" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (3) any "solid waste" under Section 1004(27) of the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6903(27).

V. EPA's FINDINGS OF FACT

A. Site Description and History

8. The Bennington Landfill Superfund Site ("Site") is located on approximately 28 acres of land on Houghton Lane in the Town of Bennington, Vermont. The Site is located approximately three miles north of Bennington center and comprises approximately 15 acres of a 28 acre property. The Site is bordered to the north by an inactive sand and gravel pit, to the

west by Town-owned, undeveloped land, to the east by a wetland area where Hewitt Brook originates, and to the south by Houghton Lane. A map, generally depicting the Site, is attached as Appendix C.

9. In 1969, the Town began operating the Site where it received residential, commercial, and industrial solid and liquid wastes. The Town leased the Site property for use as a landfill from 1969 until 1985, when it purchased the Site property from the individual owner, Mr. Alden Harbour. In April 1987, the Town closed the Site and presently uses it only for transfer, recycling, and sorting operations.

10. Throughout the period 1969 to 1987, residential, commercial and industrial solid wastes were disposed of at the Site. From 1969 to 1975, inclusive, liquid industrial wastes were disposed of in an unlined lagoon at the Site. The Town discontinued use of the lagoon in 1975 due to concerns raised by the State regarding contamination at the Site. After attempting to solidify the liquids within the lagoon, the Town covered the lagoon with landfill material.

11. A buried drainage system constructed in 1976 was designed to lower the groundwater level under the Site in order to control the migration of contaminants therefrom. This drainage system discharges through a pipe or culvert ("underdrain discharge pipe") into an unlined ponded area on the eastern side

of the Site (the "drainage pond"). A surface water diversion channel was constructed by the Town in 1976 to divert surface water runoff from the western portion of the Site. Water in this diversion channel flows south along the west side of the Site and eventually drains into a wetland area located to the south of the Site.

12. Pursuant to a State of Vermont Solid Waste Program Permit, the VT DEC approved the March 25, 1989 Bennington Landfill Closure Plan and the Site was closed. Closure began on September 1, 1989 and was completed on October 16, 1990.

13. Waste Materials remain in the soil and groundwater at the Site. Waste Materials from the Site which have entered the groundwater have migrated, and continue to migrate, contaminating soil and groundwater in some areas to the south and east of the Site.

14. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on March 31, 1989. 54 Fed. Reg. 13,295. In accordance with the statutory requirements for NPL sites, the Agency for Toxic Substances and Disease Registry ("ATSDR") completed a Preliminary Health Assessment for the Site. The ATSDR report recommended that Site access to certain areas be restricted and private wells be monitored.

15. Since June 1991, EPA has overseen the performance of the Phase 1A and Phase 1B of the remedial investigation ("RI") by a group of potentially responsible parties ("PRPs") pursuant to an Administrative Order by Consent. On May 8, 1995, EPA disapproved the proposed RI and, at the same time, provided notice to proceed with the feasibility study ("FS"). The PRPs are currently performing the RI and FS.

B. Respondents

16. Respondent, Town of Bennington, Vermont, is a municipal corporation with offices in Bennington, Vermont and owned and/or operated all or a portion of the Site during a time of disposal at the Site of hazardous substances, as defined in Section 101(14) of CERCLA.

17. a. Respondent, B.Co., is a corporation with its principal place of business in Reno, Nevada. Respondent B.Co., formerly known as Bijur Lubricating Co. of Bennington, Vermont, owns and operates the former Bijur facility in Bennington, VT. B.Co. arranged for the disposal or treatment of hazardous substances, as defined in Section 101(14) of CERCLA, at the Site or accepted hazardous substances for transport to the Site.

b. Respondent, Eveready Battery Company, Inc., is a Deleware corporation. Eveready Battery Company, Inc. is a wholly-owned subsidiary of Ralston Purina Company which has its principal place of business at Checkerboard Square, St. Louis, Missouri.

In June 1986, Ralston Purina Company purchased the assets of the Battery Products Division of Union Carbide Corporation, transferred those assets to Eveready Battery Company, Inc., and assumed responsibility for and agreed to indemnify Union Carbide Corporation for certain environmental liabilities which may include certain liabilities at this Site. Union Carbide Corporation and Eveready Battery Company, Inc. arranged for the disposal of hazardous substances, as defined in Section 101(14) of CERCLA, at the Site or accepted hazardous substances for transport to the Site.

c. Respondent, Johnson Controls Battery Group, Inc., is a corporation and wholly owned subsidiary of Johnson Controls, Inc. which has a principal place of business in Milwaukee, Wisconsin. Respondent Johnson Controls Battery Group, Inc. arranged for the disposal or treatment of hazardous substances, as defined in Section 101(14) of CERCLA, at the Site or accepted hazardous substances for transport to the Site.

d. Respondent, Textron, Inc., is a corporation with a principal place of business in Providence, Rhode Island. Respondent Textron, Inc. arranged for the disposal or treatment of hazardous substances, as defined in Section 101(14) of CERCLA, at the Site or accepted hazardous substances for transport to the Site.

C. <u>EPA and State Activities and Environmental Status of Site</u>

18. In August 1974, the Town conducted a study of the leachate at the Site and numerous investigations have been conducted since 1974 by the VT DEC and the EPA. Site historical data indicates that a variety of wastes containing hazardous substances were disposed of at the Site during the late 1960's, 1970's, and 1980's and that elevated levels of volatile organic compounds ("VOCs"), semi-volatiles ("SVOCs"), polychlorinated biphenyls ("PCBs") and metals are present in shallow groundwater, underdrain discharge, and drainage pond sediments.

19. In August 1986, the VT DEC carried out a site inspection of the Site. Groundwater samples were collected from private and on-Site wells, and the Site underdrain discharge. On-Site surface water and sediment samples were also collected. Contamination was detected in samples collected from the Site underdrain discharge. The results indicate that VOCs, SVOCs and PCBs were not detected in private wells. Several of the on-Site monitoring wells contained VOCs and SVOCs. Benzene, ethylbenzene, toluene, xylene, naphthalene, di-n-butyl phthalate, ethyl phthalate, 2-methylnaphthalene, p-chloro-m-cresol, 4-methylphenol, and PCBs were detected in samples collected from the outflow of the underdrain discharge pipe. Nickel, lead, and arsenic were also detected in the underdrain discharge and in sediment samples.

20. In February 1987, the VT DEC prepared a report ("1987 VT DEC Report") entitled "Bennington Landfill, Houghton Lane, Bennington, Vermont 05201, USEPA #:VTD 981064223, Potential Hazardous Waste Site, SI, February, 1987" which recommended that a Remedial Investigation/Feasibility Study ("RI/FS") be conducted at the Site.

21. The Town has taken several actions to reduce the potential for the generation of leachate and migration of Waste Materials. These actions include surface water and groundwater collection and diversion measures and the installation of a VT DEC approved cap, namely, a 24-inch soil cover to minimize leachate generation by reducing infiltration from rainwater and snowmelt.

22. Following the Site's listing on the NPL, EPA conducted a site assessment. Contamination detected in samples collected during this investigation revealed similar results to the results of the 1986 samples reflected in the 1987 VT DEC Report. In 1993, the EPA collected samples from domestic wells adjacent to the Site. Based on testing to date, the concentration of chemicals in private wells in the vicinity of the Site do not exceed drinking water standards.

23. In June 1991, a group of PRPs entered into an Administrative Order by Consent to conduct and fund a RI/FS for

the Site pursuant to 40 C.F.R. § 300.430, performance of which is ongoing at this time.

24. Based on the preliminary results of the RI/FS, the EPA approved the initiation of an Engineering Evaluation/Cost Analysis ("EE/CA") on January 27, 1994, to assess various options for controlling and containing the source of contamination at the Site. The EE/CA, intended to evaluate the cost, effectiveness, and implementability of the various response actions to control the source of contamination at the Site, was conducted under EPA oversight by a group of PRPs (the "RI/FS PRPs") pursuant to the existing RI/FS Administrative Order by Consent. After the RI/FS PRPs submitted draft EE/CAs in April and June, 1994, EPA disapproved the draft EE/CA and modified certain sections. EPA held a public informational meeting in July 1994 to present the EE/CA and the EPA's preferred alternative and then held a public hearing on September 13, 1994 to receive oral comments.

25. After the public comment period, EPA issued an Action Memorandum for the Site on December 23, 1994 which represents EPA's formal decision stemming from the EE/CA process. The preferred alternative authorized by the Action Memorandum consists of implementing a non-time-critical removal action ("NTCRA") which includes specific source control measures such as a composite barrier cap with drainage controls, cap maintenance, excavation and consolidation of soils and sediments, leachate

collection, upgradient groundwater isolation, gas management, and Site management and institutional controls.

26. Based on the preliminary results of the RI/FS, shallow sand and gravel groundwater contamination at the Site consists of a mappable area of trace level VOCs extending eastward away from the Site. A total of nineteen (19) VOCs were detected in the 55 shallow sand and gravel groundwater samples collected during the Phase 1A and Phase 1B of the remedial investigations. Three wells exhibited contamination which resulted in elevated risk estimates. All maximum detected concentrations of the VOCs and PCBs were above federal and state ground water quality standards in the shallow sand and gravel groundwater.

27. PCBs and VOCs have been detected in the shallow sand and gravel groundwater aquifer. Sediment samples collected from several seasonal water bodies were combined with surface soil samples because sediment samples from these areas are not submerged during drier periods of the year (late spring, summer, early autumn) when receptors are likely to come in contact with these sediments. Sediments from the drainage pond and the Site underdrain discharge are treated in a manner similar to surface soils because these areas are typically dry during periods of the year when receptors are most likely to come in contact with them. Polychlorinated biphenyls (Aroclor 1242) were detected in surface and subsurface soils/exposed sediments in the area of the outflow

of the underdrain discharge pipe, in the drainage pond, and in the area east of the drainage pond.

D. Endangerment and Response

28. The primary route of exposure of human populations to hazardous substances at the Site is the potential for dermal contact with contaminated underdrain discharge soils and sediment by a present youth trespasser as well as the potential for ingestion of contaminated ground water by future residents. If a future resident were to consume the highest detected contaminant concentrations in shallow sand and gravel overburden ground water at a rate of 2 liters per day for 30 years, an increased chance of developing cancer of 4 in 1,000 (i.e., 4×10^{-3}) would be expected. The evaluation of potential exposures to average sand and gravel overburden ground water concentrations in the contaminant plume (Wells B-2, B-5, B-6, B-14 and B-15) resulted in cancer risk estimates of 8 in 10,000 (i.e., 8×10^{-4}), which is at the upper end of the National Contingency Plan (NCP) risk range.

Noncancer risks were evaluated by estimating a "Hazard Index (HI). Hazard Indices exceeding unity (i.e., one) indicate a greater likelihood for developing noncancer health effects. The total HI for shallow sand and gravel overburden ground water exposures was estimated at 200 and 20 for maximum and average detected concentrations, respectively.

29. Groundwater samples from the Site reveal that all of the hazardous substances listed in Paragraph 26 above are present in some locations at the Site at levels in excess of their Maximum Contaminant Levels ("MCLs"), non-zero Maximum Contaminant Levels Goals ("MCLGs") or Action Level (for lead), established under the Safe Drinking Water Act.

30. Because elevated levels of contamination remain in certain areas of the surface soils, sediments and groundwater at the Site, contaminated groundwater presents a potential threat to human health and the environment and, particularly, to future users of the groundwater in the area of contamination. Accordingly, residents may be exposed to contaminated drinking water through ingestion, inhalation or dermal contact.

31. The dangers posed to human health by the actual or threatened release of hazardous substances in, at or from the Site include, without limitation, those presented by the following hazardous substances: 1,1,1-Trichloroethane, 1-1-Dichloroethylene, 1,2-Dichloroethylene, Methylene Chloride, Benzene, Chloroethane, Tetrachloroethylene, Trichloroethylene, Vinyl Chloride, Polychlorinated Biphenyls (PCBs), Arsenic, Beryllium, Manganese, and Lead.

32. The Removal Action specified in the Action Memorandum signed by the Regional Administrator on December 23, 1994, and the design of the Removal Action as detailed in the Statement of

Work appended to this Order, is designed to prevent the migration of contaminated groundwater in the overburden aquifer. By preventing the migration of contaminated groundwater, this Removal Action will prevent, minimize, and/or mitigate the imminent and substantial endangerment to the public health or welfare or the environment posed by the actual or potential releases of hazardous substances from the soils and groundwater at the Site.

VI. EPA's CONCLUSIONS OF LAW AND DETERMINATIONS

33. On the basis of the Findings of Fact set forth above and the administrative record supporting this Removal Action, the EPA makes the following Conclusions of Law and Determinations:

34. The Bennington Landfill Superfund Site is a "facility" as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

35. Each Respondent is a "person" as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

36. Each Respondent is a liable party within the meaning of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

37. Each substance identified in the Findings of Fact section above is a "hazardous substance" as that term is defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14). Each hazardous substance identified in the Findings of Fact above is present at the Site.

38. The conditions described in the Findings of Fact section above constitute an actual or threatened "release" into the "environment" within the meaning of Sections 101(8) and 101(22) of CERCLA, 42 U.S.C. §§ 9601(8) and 9601(22).

39. The actual or threatened releases of hazardous substances at or from the Site may pose "an imminent and substantial endangerment to the public health or welfare or the environment" within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

40. The conditions present at the Site constitute a threat to public health, welfare, or the environment based upon the factors set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan, as amended, 40 C.F.R. Part 300 ("NCP").

41. In order to protect public health and welfare and the environment, and prevent further release or threat of release of hazardous substances in, at or from the Site, expediting design of the Removal Action is necessary and appropriate. Design of the Removal Action will consist of implementation of this Order and the Statement of Work appended to this Order.

42. The design of the Removal Action specified in this Order will be done promptly and properly by the Respondents, and will be consistent with CERCLA and the NCP if performed in

accordance with the terms of this Order and the Statement of Work.

VII. ORDER

43. Based upon EPA's jurisdiction, the Findings of Fact, Conclusions of Law and Determinations set forth above, and the administrative record supporting this Removal Action, EPA hereby orders and the Parties agree that the Respondents shall comply with the provisions of this Order and perform all actions required by the terms and conditions of this Order.

VIII. DESIGNATION OF SUPERVISING CONTRACTOR AND PROJECT COORDINATOR

44. Within seven (7) days after the effective date of this Order, the Respondents shall retain the services of a qualified and experienced Supervising Contractor for the purpose of performing the work required by this Order in accordance with the terms and conditions of the Statement of Work. Within the same seven (7) day period, the Respondents shall notify EPA and the State in writing of the name, address, and qualifications of the proposed Supervising Contractor and the name and telephone number of the Supervising Contractor's primary contact person. The Respondents shall also notify EPA and the State of the identity and qualifications of any other contractor(s) or subcontractor(s) to be used at the Site at least fourteen (14) days in advance of their performing any work under this Order.

45. The Supervising Contractor shall be a qualified and certified professional engineer with substantial expertise and experience in the cleanup of hazardous waste sites. EPA reserves the right to disapprove any contractor or subcontractor or other person engaged directly or indirectly by the Respondents to conduct work activities under this Order. If EPA disapproves the selection of any proposed contractor, the Respondents shall notify EPA and the State in writing of the name, address, and qualifications of another contractor within fourteen (14) days after receipt of the notice of disapproval.

46. Within seven (7) days after the effective date of this Order, the Respondents shall designate a Project Coordinator who shall be responsible for administration of all of the Respondents' actions called for by this Order, and shall submit the designated coordinator's name, address, and telephone number to EPA and the State. The Respondents' Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the work required under this Order. The Respondents' Project Coordinator shall not be an attorney for any of the Respondents in this matter.

47. EPA will deem the Project Coordinator's receipt of any notice or communication from EPA relating to this Order as receipt by the Respondents.

IX. DESIGNATION OF EPA COORDINATOR

48. EPA will designate a Remedial Project Manager ("RPM") for administration of its responsibilities for oversight of the day-to-day activities conducted under the Order, and for receipt of all written matter required by the Order. In addition, EPA will designate a Geographic Section Chief ("GSC") who will be responsible for all the findings of approval/disapproval, and comments on all major project deliverables. The State will designate a State Site Manager ("SSM") for receipt of all written matter required to be submitted to the State hereunder. EPA will submit the name, address, and telephone number of the RPM and GSC to the State and the Respondents within seven (7) days after the effective date of this Order. The State will submit the name, address, and telephone number of the SSM to EPA and the Respondents within seven (7) days after the effective date of this Order. Receipt of any notice or communication by the RPM from the Respondents' Project Coordinator shall be deemed receipt by EPA and receipt of any notice or communication by the SSM from the Respondents' Project Coordinator shall be deemed receipt by the VT DEC.

49. EPA's RPM shall have the authority vested in the Remedial Project Manager and the On-Scene Coordinator by the NCP, including but not limited to the authority to halt, conduct, or direct any work required by this Order, or to direct any other

response actions undertaken at the Site. Absence of the RPM from the Site shall not be cause for stoppage of work unless specifically directed by the RPM.

X. REMOVAL WORK DESIGN TO BE PERFORMED; COMPLETION OF DESIGN WORK

50. Upon retention of the Supervising Contractor, the Respondents shall commence the work detailed in the Statement of Work to perform the design of the Removal Action. The Removal Action shall be designed to meet the Performance Standards specified in the Action Memorandum and the SOW. As detailed in the Statement of Work, and subject to the condition set forth in the preceding sentence, the Respondents shall design:

a. a composite barrier low permeability cap with drainage controls;

b. a plan for the excavation of contaminated soils and sediments exceeding action levels from the drainage pond and underdrain discharge pipe area and for the consolidation of such soils and sediments with the existing landfill;

c. a plan for a gas management system;

d. a plan for air monitoring as part of the Demonstration of Compliance Plan activities to verify that no air emissions occur which exceed applicable or relevant and appropriate state or federal limits;

e. a plan for a system to collect leachate and groundwater from the existing underdrain discharge and treat it off-site to remove contaminants, or treat it in some other manner previously approved by EPA under this Order and the SOW; and

f. a plan for a structure to isolate groundwater from areas upgradient of the Site.

All work performed by the Respondents shall be conducted in accordance with CERCLA, the NCP, applicable guidance documents provided by EPA, and the provisions of this Order including any standards, specifications, and time schedules contained in the Statement of Work or specified by the RPM.

XI. MODIFICATION OF THE SOW OR RELATED WORK PLANS

51. If EPA determines, after a reasonable opportunity for review and comment by the State, that modification to the work specified in the SOW and/or in work plans developed pursuant to the SOW is necessary to design the Removal Action so that it will achieve and maintain the Performance Standards specified in the Action Memorandum and the SOW, EPA may require that such modification be incorporated into the SOW and/or such work plans. Provided, however, that a modification may only be required pursuant to this Paragraph to the extent that it is consistent with the scope of the response action selected in the Action Memorandum.

52. For purposes of this Section XI only, the "scope of the response action selected in the Action Memorandum" addressed by this Order is design of: Containment and isolation of Waste Materials, collecting and disposing of underdrain discharge, and minimization of migration of contamination from the source area.

53. If Respondents object to any modification determined by EPA to be necessary pursuant to this Paragraph, they may seek

dispute resolution pursuant to Section XXII (Dispute Resolution). The SOW and/or related work plans shall be modified in accordance with the final resolution of the dispute.

54. Respondents shall implement any work required by any modifications incorporated in the SOW and/or in work plans developed pursuant to the SOW in accordance with this Paragraph.

55. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Order.

XII. PROGRESS REPORTS

56. By the fifteenth day of each calendar month until termination of this Order, the Respondents shall submit to the EPA and the VT DEC two copies each of a written, monthly progress report concerning activities undertaken by the Respondents pursuant to this Order. These reports shall describe all significant developments during the preceding month, including but not limited to the following:

a. A description of work performed and any problems encountered as well as the developments anticipated during the next calendar month, including the work to be performed, anticipated problems, and planned resolutions of past or anticipated problems;

b. A summary of all results of validated sampling and tests received or generated by the Respondents or their contractors or agents pursuant to this Order in the previous month;

c. Identification of all NTCRA design submittals and other deliverables required by the Order that were completed and submitted during the previous month;

d. Information regarding unresolved delays encountered in the previous month or anticipated during the next month that may affect the future schedule for implementation of the NTCRA and a description of efforts made or to be made to mitigate those delays or anticipated delays;

e. Any modifications to the NTCRA plans or other schedules that Respondents have proposed to EPA or that have been approved by EPA, after a reasonable opportunity for review and comment by the State; and,

f. A description of activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next month.

If requested in writing by EPA, the Respondents also shall provide briefings for EPA and the State to discuss the progress of the design of the NTCRA.

XIII. DELIVERABLES SUBMITTED TO EPA

57. For deliverables, plans, reports or other items ("Deliverables") which require EPA approval as specified in this Order or the SOW, the Respondents shall comply with the procedures set forth in Section XIII.A. below. For Deliverables which require the Respondents' certification as specified in the SOW, the Respondents shall comply with the procedures set forth in Section XIII.B. below. If reasonably commercially available, any plan, deliverable, report or other item submitted to EPA for approval pursuant to this Order shall be printed on recycled paper containing at least 30% post-consumer content which shall be so noted on each document.

58. For all Deliverables, the Respondents shall submit such copies to EPA and the State as specified by the RPM. All

Deliverables submitted to EPA or the State pursuant to this Order shall be dated and shall include, in a prominent location in the document, the following disclaimer: "Disclaimer: This document has been prepared pursuant to a government administrative order (U.S. EPA Region I Docket No. CERCLA-I-96-1014) and has not received final acceptance from the U.S. Environmental Protection Agency. The opinions, findings, and conclusions expressed are those of the authors and not those of the U.S. Environmental Protection Agency." In addition, any such Deliverable which requires EPA approval pursuant to Section XIII.A. below and which has not received final approval from EPA shall be marked "Draft" on each page.

A. Deliverables Requiring EPA Approval

59. After review of any Deliverable which the Respondents are required to submit for approval pursuant to this Order and Statement of Work, EPA, after reasonable opportunity for review and comment by the VT DEC, may:

a. Approve the Deliverable;

b. Approve the Deliverable upon specified conditions;

c. Disapprove the Deliverable and notify the Respondents of deficiencies;

d. Disapprove the Deliverable and modify the Deliverable itself to cure any deficiencies; or

e. Any combination of the above.

A finding of approval or approval upon conditions shall not be construed to mean that EPA concurs with all conclusions, methods, or statements in the deliverables. In the event of EPA approval, approval upon conditions, or modification by EPA, pursuant to (a), (b), (d), or (e) above, the Respondents shall perform all actions required by the submission, as approved or modified by EPA. In the event of EPA modification, pursuant to (d) or (e) above, the Respondents agree to reimburse EPA for the costs of such modification or work as an oversight cost.

60. Upon receipt of a notice of disapproval with deficiencies pursuant to (c) or (e) above, the Respondents shall correct the deficiencies and resubmit the Deliverable within fourteen (14) days or such other time period specified in the notice of disapproval. Notwithstanding a notice of disapproval, the Respondents shall proceed to take any action required by any non-deficient portion of the Deliverable if not dependent upon approval of the deficient portion of the deliverable, as determined by EPA, after a reasonable opportunity for review and comment by the State. If EPA does not approve the Deliverable as resubmitted, Respondents shall be in violation of the Order and subject to stipulated penalties pursuant to Section XXIII of this Order. Upon receipt of a notice of disapproval with deficiencies pursuant to (c) or (e) above with respect to the Conceptual Design Letter Report, Intermediate Design Letter Report, 100%

NTCRA Design, and Demonstration of Compliance Plan, Respondents shall be in violation of the Order and subject to stipulated penalties both at the time of EPA's initial issuance of a disapproval with deficiencies and if EPA does not approve the Deliverable as resubmitted.

B. Deliverables Requiring Respondents' Certification

61. Each Deliverable requiring Respondents' certification as specified in the SOW shall be certified by the Respondents as provided below. Upon submittal to EPA, the Respondents shall proceed with the next scheduled activity consistent with the Deliverable without further notification or approval by EPA. Each such Deliverable shall include the following certification signed by the Respondents' Project Coordinator:

> "I certify, to the best of my knowledge and professional judgment, and after appropriate inquiries of all relevant persons involved in the preparation of this Deliverable, that all guidance documents specified in Attachment 1 of the SOW which relate to this Deliverable were reviewed in preparation of this Deliverable. I further certify that the contents of this Deliverable complies with the requirements of the SOW, Attachment 1 thereto, and all guidance documents specified in Attachment 1 which relate to this Deliverable. I am aware that EPA may assess stipulated penalties for submission of a Deliverable that is not in compliance with the requirements of the SOW, Attachment 1 thereto, and all guidance documents specified in Attachment 1 to the SOW which relate to this Deliverable."

62. EPA, at its discretion, may provide comments to the Respondents concerning any Deliverable requiring Respondents' certification, and may disapprove the Deliverable and notify the

Respondents of deficiencies. Before taking any action under this Paragraph, EPA shall provide the State with a reasonable opportunity for review of and comment on such action. Upon receipt of a notice of disapproval with deficiencies, the Respondents shall correct the deficiencies and resubmit the Deliverable within fourteen (14) days or such other time period specified by EPA in the notice of disapproval. Notwithstanding a notice of disapproval, the Respondents shall proceed to take any action required by any non-deficient portion of the Deliverable. If EPA disapproves the Deliverable as resubmitted, the Respondents shall be in violation of the Order and subject to stipulated penalties pursuant to Section XXIII of this Order.

XIV. INCORPORATION AND ENFORCEABILITY OF DOCUMENTS

63. The Statement of Work and all other appendices or attachments to this Order shall be deemed incorporated into, and made an enforceable part of, this Order. Upon approval by EPA pursuant to the procedures of Section XIII.A., or upon certification by the Respondents pursuant to Section XIII.B., whichever applies, all Deliverables required by or developed under this Order shall be deemed incorporated into, and made an enforceable part of, this Order. In the event of conflict between this Order and any document attached to, incorporated into, or enforceable hereunder, the provisions of this Order shall control.

XV. SITE ACCESS

64. Respondent Town of Bennington hereby agrees to provide access to, use of, or easements on the Site, to the Respondents, the United States, the State, and their representatives including, but not limited to EPA, the VT DEC and any EPA or VT DEC contractors, for purposes of: overseeing and implementing the work required under this Order, the SOW, and the Action Memorandum; implementing any monitoring of the groundwater, surface water, air, sediments, or soils at the Site; and overseeing and implementing any additional response actions at the Site. Respondent Town of Bennington shall provide such access to the Site consistent with the requirements of the Action Memorandum and the SOW.

65. To the extent access to, use or ownership of, or easements over property other than the Site is required for the proper and complete implementation of this Order, the Respondents shall use their best efforts to obtain access agreements or other interests in the property, in writing, sufficient to allow implementation of this Order within thirty (30) days after the Order's effective date. For purposes of this paragraph, "best efforts" include but are not limited to the payment of reasonable sums of money in consideration of access to property.

66. Such written access agreements or other interests other than the Site obtained pursuant to the preceding paragraph shall

provide Respondents, the United States and the State and their representatives, including, but not limited to EPA, VT DEC and their contractors, access to any such areas at all reasonable times for purposes of implementing and monitoring work under this Order. Such written access agreements or other interests shall specify that the Respondents are not representatives or agents of the United States or the State with respect to liability associated with the Site.

67. In the event that access agreements or other interests sufficient for implementation and monitoring of work under this Order are not obtained within the time period specified above, the Respondents shall notify EPA and the State in writing within three (3) days thereafter regarding the lack of such agreements and the efforts made by the Respondents to obtain them. Lack of access shall not excuse or justify failure to perform any activity or to meet any deadline not requiring or directly dependent upon such access.

68. EPA may, as it deems appropriate, assist the Respondents in obtaining access agreements. The Respondents shall reimburse EPA for all costs incurred by EPA in obtaining access, including, but not limited to, attorneys fees and the amount of just compensation.

XVI. QUALITY ASSURANCE/SAMPLING

69. The Respondents shall submit to EPA and the State, upon receipt, the results of all sampling or tests and all other data generated by the Respondents, their contractor(s), or on the Respondents' behalf in the course of implementing this Order. The Respondents shall also provide the quality assurance/quality control procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

70. Upon request, the Respondents shall allow EPA, the State or their authorized representatives to take split and/or duplicate samples of any samples collected by the Respondents while performing work under this Order. The Respondents shall notify EPA and the State in writing not less than twenty-one (21) days in advance of any sample collection activity. In addition, EPA and the State shall have the right to take any additional samples that they deem necessary.

71. The Respondents shall assure that EPA, the State and their authorized representatives are allowed access to any laboratory utilized by the Respondents in implementing this Order. Upon request, the Respondents shall have a designated laboratory analyze samples submitted by EPA or the State for quality assurance monitoring.

XVII. ACCESS TO INFORMATION; RECORD PRESERVATION; CONFIDENTIALITY CLAIMS

72. Upon request, the Respondents shall provide EPA and the State with copies of all records, documents, and other

information generated by the Respondents and their contractor(s) which relate in any way to the Site or to the implementation of this Order, including but not limited to, sampling and analysis records, field sheets and field notes, engineering logs, chain of custody records, bills of lading, trucking logs, manifests, receipts, reports, and correspondence. In addition, the Respondents' employees, agents, or representatives with knowledge of facts concerning the conditions at the Site or performance of work under this Order shall be made available to EPA and the State to provide such information.

73. For a period of at least six (6) years following notification by EPA that the Respondents have completed the design of the Removal Action in accordance with this Order, the Respondents shall preserve all documents, records, and information of whatever kind, nature or description in their possession and/or control or that of their officers, employees, agents, accountants, contractors, attorneys, successors and assigns, that relate in any way to the performance of work under this Order, or relate in any way to releases or threatened releases of hazardous substances which are the subject of the design of the Removal Action addressed by this Order. After this six (6) year period has expired, the Respondents shall provide EPA and the State with sixty (60) days advance written notice prior to the destruction of any such records, documents, or

information. The Respondents shall send such notice, accompanied by a copy of this Order, to:

Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
J.F.K. Federal Building
Boston, Massachusetts 02203
Re: Removal Action at Bennington Landfill Superfund Site, Docket No. CERCLA-I-96-1014

and

Office of the Attorney General
109 State Street
Montpelier, VT 05609-1001

Upon request, the Respondents shall provide to EPA and the State copies of all such records, documents, or information.

74. The Respondents may assert a confidentiality claim, if appropriate, covering part or all of the information required by or requested under this Order, pursuant to Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b) (1989). The Respondents shall adequately substantiate all such assertions. Analytical and other data shall not be claimed as confidential by the Respondents. Information determined to be confidential by EPA, after a reasonable opportunity for review and comment by the State, will be afforded the protection required by Section 104(e)(7) of CERCLA and by 40 C.F.R. Part 2, Subpart B. If no confidentiality claim accompanies the information when submitted to EPA, EPA may make it available to the public without further notice to the Respondents.

XVIII. CREATION OF DANGER; EMERGENCY RESPONSE

75. Upon the occurrence of any incident or change of conditions during the activities conducted pursuant to this Order that causes or threatens a release of hazardous substances from the Site or an endangerment to the public health or welfare or the environment, the Respondents shall immediately take all appropriate action to prevent, abate or minimize such release or endangerment. The Respondents shall also immediately notify the RPM or, in the event of her or his unavailability, shall notify the Regional Duty Officer of the Emergency Planning and Response Branch, EPA Region I, telephone 617-223-7265. In addition, the Respondents shall also notify the Vermont DEC Emergency Response Program at telephone no. 1-800-641-5005. In taking any actions under this paragraph, the Respondents shall act in accordance with all applicable provisions of the Health and Safety Plan prepared pursuant to the Statement of Work.

76. The Respondents shall submit a written report to EPA and the State within seven (7) days after each incident specified above, setting forth the events that occurred and the measures taken and to be taken to mitigate any release or endangerment caused or threatened by the incident and to prevent the reoccurrence of such an incident.

77. Nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment

or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site.

XIX. OFF-SITE RULE

78. All hazardous substances, pollutants or contaminants removed off-Site pursuant to this Order for treatment, storage, or disposal shall be treated, stored, or disposed of at a facility in compliance with Section 121(d)(3) of CERCLA and Section 300.440 of the NCP, as determined by EPA. To the extent any hazardous substances, pollutants or contaminants to be removed off-Site also constitute a "hazardous waste" as defined in §7-103 of the Vermont Hazardous Waste Management Regulations, effective August 15, 1991, the Respondents shall comply with the manifesting requirements of § 7-306 of said regulations.

79. The Respondents shall, prior to any off-Site shipment of Waste Materials from the Site to an out-of-state waste management facility, provide written notification of such shipment of Waste Materials to the appropriate state environmental official in the receiving facility's state, and to the EPA Project Coordinator and the Vermont DEC Project Manager. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

80. The Respondents shall include in the written notification the following information: (a) the name and location of the facility to which the Waste Materials is to be shipped; (b) the type and quantity of the Waste Materials to be shipped; (c) the expected schedule for the shipment of the Waste Materials; and (d) the method of transportation. The Respondents shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Materials to another facility within the same state, or to a facility in another state.

XX. FINANCIAL ASSURANCE; INSURANCE

81. Within thirty (30) days after the effective date of this Order and annually thereafter until notification by EPA that the Respondents' design obligations under the SOW have been completed, one (1) or more of the Respondents shall submit to EPA a demonstration that they meet one (1) of the financial assurance mechanisms specified in 40 C.F.R. § 264.143 for the estimated costs of work to be performed by the Respondents under this Order.

82. At least seven (7) days prior to commencing any on-Site work under this Order, the Respondents shall secure, and shall maintain for the duration of this Order, comprehensive general liability and automobile insurance with limits of three million dollars ($3,000,000), combined single limit. The United States

shall be named as an additional insured for all such insurance policies. In the event any insurer makes money available to any of the Respondents to compensate for a loss caused by harm to the environment or an accident occurring during the performance of activities conducted by the Respondent under this Order, such insurance money shall first be used to remedy the environmental harm before being allocated to or spent on any other expenses or for any other purposes. Within the same time period, the Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy. If the Respondents demonstrate to EPA that any contractor or subcontractor maintains insurance equivalent to that described above or insurance covering the same risks but in a lesser amount, then the Respondents need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XXI. FORCE MAJEURE

83. The Respondents agree to perform all requirements under this Order within the time limits established under this Order, unless the performance is delayed by force majeure. For purposes of this Order, force majeure is defined as any event arising from causes beyond the control of Respondents or of any entity controlled by Respondents, including but not limited to their contractors and subcontractors, that delays or prevents

performance of any obligation under this Order despite Respondents' best efforts to fulfill the obligation. Force majeure does not include financial inability to complete the work or a failure to attain the Performance Standards. In the event that circumstances occur which the Respondents assert were caused by a force majeure event, as soon as possible but in no event later than three (3) working days of such occurrence, the Respondents shall orally notify the EPA RPM and the Vermont DEC Project Manager and shall identify with specificity the cause and the estimated duration of such delay. Within five (5) working days after such circumstances, the Respondents shall supply to EPA and the State in writing an explanation of the cause(s) of any actual or expected delay or noncompliance, the anticipated duration of any delay, the measures taken and to be taken by the Respondents to prevent or minimize the delay or correct the noncompliance, and the timetable for implementation of such measures. Failure to notify EPA and the State in a timely manner shall result in a waiver of the Respondents' right to assert that the delay should be excused under the terms of this Section.

84. If EPA determines, after a reasonable opportunity for review and comment by the State, that a delay in performance of a requirement under this Order is or was attributable to a force majeure event, the time period for performance of that requirement shall be extended as deemed necessary by EPA, after a

reasonable opportunity for review and comment by the State. Such an extension shall not alter Respondents' obligation to perform or complete other tasks required by the Order which the EPA determines, after a reasonable opportunity for review and comment by the State, are not directly affected by the force majeure event.

XXII. DISPUTE RESOLUTION

85. If the Respondents object to any EPA decision made pursuant to this Order, including any decision which has resulted in the assessment of stipulated penalties, the Respondents shall notify EPA and the State in writing of their objections within ten (10) days of receipt of the notice of such decision. EPA and the Respondents shall communicate on the disputed matter and shall have thirty (30) days from the receipt by EPA of the notification of objection to reach agreement. If agreement cannot be reached on any issue within this thirty (30) day period, EPA, after a reasonable opportunity for review and comment by the State, shall thereafter provide a written statement of its decision to the Respondents and the Respondents shall implement the activities required by the EPA decision beginning no later than five (5) days after receipt of the EPA statement. Except as specifically provided herein, engagement of dispute resolution among the parties shall not be cause for the delay of any work. No EPA decision made pursuant to this Section

shall constitute a final agency action giving rise to judicial review.

86. In the event that the Respondents do not implement the activities required by the EPA decision, the Regional Administrator may take such civil enforcement actions against the Respondents as may be provided by statutory or equitable authorities, including, but not limited to, the assessment of such civil penalties or damages as are authorized by Sections 106, 107, 109 and 122 of CERCLA. In such an event, EPA retains the right to perform the design of the Removal Action pursuant to its authority under CERCLA and to recover the costs thereof from the Respondents.

XXIII. STIPULATED PENALTIES

87. The Respondents shall be liable for stipulated penalties in the amounts set forth in this Section to EPA for failure to comply with the requirements of this Order specified below, unless excused under Section XXI (Force Majeure) or Section I, Paragraph 3 of this Order. "Compliance" by the Respondents shall include but not be limited to the timely and adequate submission of Deliverables and performance of activities under this Order in accordance with all applicable requirements of law, this Order, the SOW, and any Deliverables approved by EPA or certified by the Respondents pursuant to this Order.

88. The following stipulated penalties shall be payable per violation per day to EPA for any noncompliance including but not limited to failure to submit timely or adequate Deliverables including, but not limited to, the Conceptual Design Letter Report, Intermediate Design Letter Report, 100% NTCRA Design, NTCRA Implementation Schedule, Demonstration of Compliance Plan, and Health and Safety Plan:

Penalty Per Violation Per Day	Period of Noncompliance
$ 1,500	1st through 14th day
$ 3,000	15th through 30th day
$ 5,000	31st day and beyond

89. The following stipulated penalties shall be payable per violation per day to EPA for failure to submit timely or adequate progress reports, financial assurance documentation, or to provide access pursuant to the SOW and this Order:

Penalty Per Violation Per Day	Period of Noncompliance
$ 750	1st through 14th day
$ 1,500	15th day and beyond

90. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Order.

91. Following EPA's determination that the Respondents have failed to comply with a requirement of this Order, EPA may give the Respondents written notification of the same and describe the noncompliance. EPA may send the Respondents a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified the Respondents of a violation, except that any daily penalties shall not accrue for any noncompliance occurring after the thirtieth day of noncompliance until EPA has provided Respondents with notice of noncompliance pursuant to this Paragraph. Any EPA failure to notify Respondents of any noncompliance under this Order shall only affect the daily accrual of stipulated penalties with respect to the particular noncompliance for which notice has not been provided but not the accrual of penalties with respect to any other noncompliance.

92. Any penalty accruing under this Section shall be due and payable within fourteen (14) days of the receipt of a written demand by EPA. Payment of such penalty shall be made by certified check payable to the Hazardous Substances Superfund, and mailed to the following address with a notation of the docket number of this Order:

Region I
U.S. Environmental Protection Agency
Attn: Superfund Accounting
P.O. Box 360197 M
Pittsburgh, PA 15251

A copy of the certified check shall be sent to the Remedial Project Manager within five (5) days of payment. Nothing in this Order shall be construed as prohibiting, altering, or in any way limiting the ability of the EPA to seek any other remedies or sanctions available by virtue of Settling Defendants' violation of this Order or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA.

XXIV. INDEMNIFICATION

93. The United States does not assume any liability by entering into this Order or by virtue of any designation of the Respondents as EPA's authorized representatives under Section 104(e) of CERCLA. The Respondents shall indemnify, save and hold harmless the United States, the State, and their officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of the Respondents, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Order, including, but not limited to, any claims arising from any designation of the Respondents as EPA's authorized representatives under Section 104(e) of CERCLA. Further, the Respondents agree to pay the

United States and the State all costs they incur including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States or the State based on negligent or other wrongful acts or omissions of the Respondents, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Order. Neither the United States nor the State shall be held out as a party to any contract entered into by or on behalf of the Respondents in carrying out activities pursuant to this Order. Neither the Respondents nor any such contractor shall be considered an agent of the United States or the State.

XXV. WAIVER OF SETTLEMENT CONFERENCE

94. In consideration of the communications among the Respondents and EPA regarding the terms of this Order prior to its issuance, Respondents hereby agree that there is no need for a settlement conference prior to the effective date of this Order.

XXVI. COVENANTS NOT TO SUE

A. EPA's Covenant Not to Sue

95. In consideration of the actions that will be performed and the payments that will be made by the Respondents under the terms of this Order, and except as specifically provided in

Section XXVII of this Order (EPA's Reservation of Rights), EPA covenants not to sue or to take administrative action against the Respondents pursuant to Sections 106 and 107(a) of CERCLA for the matters addressed in this Order. These covenants not to sue shall take effect upon notification by EPA that the Respondents have completed the design of the Removal Action in accordance with this Order. These covenants not to sue are conditioned upon the complete and satisfactory performance by the Respondents of their obligations under this Order. These covenants not to sue extend only to the Respondents and do not extend to any other person. Respondents are not released from liability, if any, for any actions taken beyond the terms of this Order regarding the construction, implementation, and post-removal site control of this removal action, other removal actions, remedial investigation/feasibility studies related to any operable unit, remedial design/remedial action related to any operable unit, operation and maintenance of any remedial action, or activities arising pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9621(c).

B. Respondents' Covenant Not to Sue

96. Except for purposes of enforcement of this Order and for purposes of Respondents' private agreement(s) among themselves, the Respondents covenant not to sue and agree not to

assert any claims or causes of action against one another with respect to the design of the Removal Action.

97. The Respondents hereby covenant not to sue and agree not to assert any claims or causes of action against the United States or the State with respect to this Order including, but not limited to, the following:

a. Any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 111, 112, 113 or otherwise any other provision of law;

b. Any claim against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site;

c. Any claim under the Tucker Act, 28 U.S.C. § 1491, or at common law, arising out of or relating to access to, institutional controls on, or response activities undertaken at the Site; and

d. Any claims arising out of response activities at the Site. However, the Respondents reserve, and this Order is without prejudice to, actions against the EPA based on negligent actions taken directly by the EPA (not including oversight or approval of the Respondents' plans or activities) that are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

Nothing in this Order shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XXVII. EPA'S RESERVATION OF RIGHTS

98. EPA's covenants not to sue set forth in Paragraph 95 do not pertain to any matters other than those expressly specified

in Paragraph 95. EPA reserves, and this Order is without prejudice to, all rights against the Respondents with respect to all other matters, including but not limited to, the following:

a. Claims based on a failure by the Respondents to meet a requirement of this Order;

b. Liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site;

c. Liability for damages for injury to, destruction of, or loss of natural resources, including the costs of assessing such injury, destruction, or loss;

d. Criminal liability;

e. Liability for any response actions at the Site that are not required to be performed by the Respondents pursuant to this Order;

f. Liability for any costs that the United States has incurred or will incur related to the Site; and

g. Liability for violations of any law.

99. In the event EPA determines that the Respondents have failed to perform any portions of the design of the Removal Action in an adequate or timely manner, EPA may perform any and all portions of the Removal Action design as EPA determines necessary. The Respondents may invoke the procedure set forth in Section XXII (Dispute Resolution) to dispute EPA's determination that the Respondents failed to perform any portions of the design of the Removal Action in an adequate or timely manner as arbitrary and capricious or otherwise not in accordance with law.

100. Notwithstanding any other provision of this Order, EPA

retains all authority and reserves all rights to take any and all response actions authorized by law.

XXVIII. CONTRIBUTION PROTECTION

101. With regard to claims for contribution against the Respondents relating to the design of the Removal Action, the Respondents are entitled to such protection from contribution actions or claims as is provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2).

XXIX. OTHER CLAIMS

102. Except as expressly provided in Section XXVI (Covenant Not to Sue), nothing in this Order shall constitute a satisfaction of or release from any claim or cause of action against the Respondents or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(a).

103. The Respondents waive any direct or indirect claim for reimbursement from the United States or the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. 9507) under Sections 106(b), 107, 111, 112 or 113 of CERCLA, 42 U.S.C. §§ 9606(b), 9607, 9611, 9612 or 9613, or any other provision of law.

104. No action or decision by EPA pursuant to this Order shall give rise to any right to judicial review except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXX. AMENDMENTS

105. Except as provided in Paragraph 106 below, modifications to the Order or SOW may be made only after written notification to, and written approval of, the EPA Geographic Section Chief, after a reasonable opportunity for review and comment by the State. All such modifications shall be made by written agreement between EPA and the Respondents, after a reasonable opportunity to review and comment on the proposed modifications by the State.

106. Modifications to the schedules specified in the Order for completion of the Work, or modifications to the SOW extending the time for the Respondents' performance of any requirement under this Order or SOW may be made only after written notification to, and written approval of, the RPM. All such modifications shall be made by written agreement between EPA and the Respondents, after a reasonable opportunity to review and comment on the proposed modifications by the State.

107. No informal advice, guidance, suggestion, or comment by the EPA regarding matters addressed by this Order or SOW or regarding any reports, plans, specifications, schedules, or other written material submitted by the Respondents shall be construed

as relieving the Respondents of their obligation to obtain such formal approval as may be required by this Order.

XXXI. OTHER APPLICABLE LAWS

108. Except as otherwise provided pursuant to Paragraph 109 herein and Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), all activities undertaken by the Respondents pursuant to this Order shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Such laws shall include, but not be limited to, the laws relating to occupational health and safety and worker's compensation.

109. In accordance with 40 C.F.R. § 300.415(i), all activities undertaken on the Site by the Respondents pursuant to this Order shall attain applicable or relevant and appropriate requirements under federal and state environmental laws as identified in Attachment 11 of the Action Memorandum (ARARs).

XXXII. COMMUNITY RELATIONS

110. EPA shall be responsible for preparing a Community Relations Plan and conducting a community relations program. The Respondents and the contractor engaged to conduct the design of the Removal Action under this Order shall, consistent with the Community Relations Plan:

a. Attend and participate in public meetings regarding the Site, to the extent specified by the RPM;

b. Prepare fact sheets concerning the Site and activities conducted under this Order for submission to the RPM, to the extent specified by the RPM; and,

c. Provide timely and appropriate responses to inquires from the public at the request of the RPM.

XXXIII. PLACE AND MANNER OF NOTICE

111. Communications between the Respondents and EPA, and all documents, including reports, approvals, disapprovals, written notice, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order, shall be directed through the Respondents' Project Coordinator and EPA's RPM. All such documents submitted pursuant to this Order shall be sent to the RPM and the State at the following addresses or to such other addresses as EPA hereafter may designate in writing:

Edward M. Hathaway
Remedial Program Manager
U.S. Environmental Protection Agency
Office of Site Remediation and Restoration (HBT)
J.F.K. Federal Building
Boston, MA 02203

and

Stan Corneille, State Site Manager
Waste Management Division
Vermont Department of Environmental Conservation
103 South Main Street
Waterbury, VT 05676

XXXIV. EFFECTIVE DATE

112. This Order shall be effective five (5) days after EPA mails written notice to David P. Rosenblatt, Esquire of Burns & Levinson, 125 Summer Street, Boston, Massachusetts 02110-1624, a designated representative of the Bennington Landfill Site PRP

Group, that the Order has been signed by the Director of the EPA Office of Site Remediation and Restoration.

The undersigned representatives of the Respondents certify that they are fully authorized to enter into the terms and conditions of this Order and bind the parties they represent to this document.

Agrees this 9 day of Oct., 1996.

Respondent Town of Bennington

By Stuart C. Hurd

Title Town Manager

Address: PO Box 469

Bennington Vt 05201

Telephone No. 802 442 1037

The undersigned representatives of the Respondents certify that they are fully authorized to enter into the terms and conditions of this Order and bind the parties they represent to this document.

Agrees this 2ND day of OCT, 1996.

Respondent B.Co., a Nevada Corporation

By _____
Russell F. Hooper

Title President

Address: 990 North Sierra Street

Reno, NV 89503

Telephone No. (702) 329-3858